

Nos. 13-16106, 13-16107

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STEPHANIE LENZ,

Plaintiff, Appellee, and Cross-Appellant

v.

**UNIVERSAL MUSIC CORP., UNIVERSAL MUSIC PUBLISHING, INC.,
AND UNIVERSAL MUSIC PUBLISHING GROUP,**

Defendants, Appellants, and Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of California
Honorable Jeremy Fogel, United States District Judge
Dist. Case No. 5:07-cv-03783-JF

**JOINT MOTION FOR 21-DAY EXTENSION OF TIME TO PETITION
FOR REHEARING AND FOR REHEARING EN BANC**

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STEPHANIE LENZ
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JOINT MOTION FOR EXTENSION OF TIME

Plaintiff, Appellee, and Cross-Appellant Stephanie Lenz (“Lenz”) and Defendants, Appellants, and Cross-Appellees Universal Music Corporation, Universal Music Publishing, Inc., and Universal Music Publishing Group (collectively “Universal”) respectfully and jointly move for a 21-day extension of the time within which any party may file a petition for rehearing and for rehearing en banc in this matter. As set forth below, good cause exists for the requested extension on account of the recent passing of a family member of one of Lenz’s counsel, the travel schedules of counsel, the complexity of the issues presented by the decision, and the need for Lenz and Universal to analyze the decision and determine whether to seek further review. *See* Declaration of Daniel Nazer (“Nazer Decl.”) ¶¶ 1-5.

If the requested extension is granted, the petition would be due on October 19, 2015.

On September 14, 2015, this Court issued a published opinion in this case, affirming the district court’s order denying the parties’ cross-motions for summary judgment and remanding for a trial. Lenz and Universal are, respectively, evaluating the decision and whether to file a petition for rehearing and/or rehearing en banc. Nazer Decl., ¶ 2. Under Fed. R. App. P. 40(a)(1), a petition for panel rehearing “may be filed within 14 days after entry of judgment,” unless that time is

extended. Under Fed. R. App. P. 35(c), a petition for rehearing en banc likewise must be filed “within the time prescribed by Rule 40 for filing a petition for rehearing.” Because the panel’s judgment was entered on September 14, 2015, a petition for rehearing and for rehearing en banc would ordinarily be due on September 28, 2015. *See* Fed. R. App. P. 26(a). For good cause, the due date for filing the petition may be extended. *See* Fed. R. App. P. 26(b); Fed. R. App. P. 40(a)(1).

As set forth in the attached declaration, good cause exists for a 21-day extension. The mother of one of Lenz’s primary counsel passed away on September 15, 2015. Nazer Decl., ¶ 4. He will be attending exclusively to personal matters for a number of days. In addition, other counsel on this appeal had pre-arranged international travel for the week immediately following this Court’s decision. *See id.* Similarly, Universal’s in-house counsel overseeing this case will be traveling and unavailable later this month. *See id.* Accordingly, Lenz’s attorneys who have worked most closely on this case are essentially unavailable for at least a week following the Court’s ruling, and Universal’s in-house counsel will similarly be unavailable.

This case presents important questions of copyright law that resulted in a 2-1 decision from the panel. The Court considered, among other issues, whether 17 U.S.C. § 512(c)(3)(A)(v) of the Digital Millennium Copyright Act (“DMCA”)

requires that fair use be considered before sending a takedown notice, the application of *Rossi v. Motion Picture Ass'n of Am. Inc.*, 391 F.3d 1000 (9th Cir. 2004), and whether a plaintiff may seek nominal damages under 17 U.S.C. § 512(f). As such, any petition for rehearing or rehearing en banc requires careful analysis and deliberation. Any petition will be filed within the time requested.

For the foregoing reasons, Lenz and Universal respectfully submit that a 21-day extension of the due date for filing a petition for rehearing and for rehearing en banc should be granted.

Dated: September 17, 2015

Respectfully submitted,

By: /s/ Daniel K. Nazer
Daniel K. Nazer

ELECTRONIC FRONTIER
FOUNDATION

*Attorneys for Plaintiff, Appellee, and
Cross-Appellant STEPHANIE LENZ*

Dated: September 17, 2015

By: /s/ Kelly M. Klaus
Kelly M. Klaus

MUNGER, TOLLES & OLSON LLP

*Attorneys for Defendants, Appellants, and
Cross-Appellees Universal Music
Corporation, Universal Music Publishing,
Inc., and Universal Music Publishing
Group*

NAZER DECLARATION

Daniel K. Nazer, Esq., being of full age, hereby certifies and says:

1. I am a Staff Attorney at the Electronic Frontier Foundation and have served as counsel for Plaintiff, Appellee, and Cross-Appellant Stephanie Lenz (“Lenz”). Except as otherwise stated, the matters set forth herein are based upon my personal knowledge, and I could and would testify competently thereto if called upon to do so.

2. Lenz is evaluating the Court’s September 14, 2015 decision and her options for filing a petition for rehearing and for rehearing en banc. I am informed that counsel for Universal are similarly evaluating Defendants’ options for filing a petition for rehearing and for rehearing en banc.

3. In the absence of an extension, a petition for rehearing and for rehearing en banc would be due on September 28, 2015.

4. Counsel believe that good cause exists for a 21-day extension of time to October 19, 2015, in light of the following factors:

- a. I am informed that Michael Kwun’s mother passed away on September 15, 2015.
- b. Corynne McSherry, who argued this appeal for Stephanie Lenz, departed for London on the day the Court issued its opinion. Ms. McSherry had prearranged travel plans for the week to attend a conference. Ms. McSherry and Mr. Kwun are Lenz’s attorneys who worked most closely on this appeal.
- c. The opinion in this case addresses complex questions of

copyright law and any petition for rehearing will require careful analysis and consideration.

5. I am informed by Kelly Klaus of Munger, Tolles & Olson LLP, counsel for Universal, that Universal's in-house counsel overseeing this case will be traveling and unavailable later this month. On September 17, 2015, Mr. Klaus informed me by email that Universal agrees to join this request for a 21 day extension of time to file.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, on September 17, 2014.

/s/ Daniel K. Nazer

Daniel K. Nazer

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 17, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 17, 2015

By: /s/ Daniel K. Nazer
Daniel K. Nazer
Attorneys for Plaintiff, Appellee, and Cross-Appellant STEPHANIE LENZ